



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: BCS - 216544

PRELIMINARY RECITALS

Pursuant to a petition filed on January 7, 2025, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on January 29, 2025, by telephone. The hearing record was held open for six days so that the petitioner could submit additional documentation related to the case.

The issue for determination is whether the agency correctly included the petitioner's employment income for his BadgerCare Plus eligibility.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Michelle Olusegun
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kate J. Schilling
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He has been on and off BadgerCare Plus since 2018.

2. On December 16, 2024, the petitioner submitted an ACCESS application for FoodShare and health care. He reported being homeless, having no income or expenses, and being an assistance group of one.
3. The agency staff processing the application noticed that there were wages from an employer reported for him in the electronic state wage reporting database.
4. On December 17, 2024, the agency sent a notice to the petitioner requesting verification of his employment income.
5. On December 27, 2024, the petitioner completed his FS telephone interview with the agency. When he was asked about his employment, he stated that he was still working but his income should not be considered as income per his interpretation of the IRS definition of income.
6. On December 30, 2024, the agency sent a notice to the petitioner that it needed verification of his income for BadgerCare Plus by January 13, 2025.
7. On January 10, 2025, the agency sent a notice to the petitioner that he was denied BCP due to his income being over the income limit. The notice indicated that he earned \$1,398.69 every other week and \$2,797.38 per month.

DISCUSSION

To be eligible for BadgerCare Plus (BCP), individuals must have income that is less than the applicable program income limit. Parents and caretakers of minor children as well as childless adults are subject to an income limit of 100% of the federal poverty level (FPL). *BadgerCare Plus Eligibility Handbook (BCP Handbook)* §16.1.1. Generally, the test group size of a tax filer who is not being claimed as a tax dependent by another individual includes himself, his spouse (if any), and all of his tax dependents. *BCP Handbook* §2.3 and 42 C.F.R. §435.603(f)(1).

If an individual has fluctuating monthly income, their income may exceed 100% FPL in one or more months of the year, but their annual income may still remain under 100% FPL. Accordingly, the agency must evaluate both whether the individual's income in the past thirty days has exceeded 100% FPL and whether the individual's anticipated countable annual income will exceed 100% FPL. See *BCP Handbook* §16.9 and §28.3.1.

To determine whether an individual is eligible, the agency must determine the countable income of that individual (and any other countable income received by members of the individual's assistance group) and then compare that figure to the BCP income limit. Countable household income for BCP is determined by calculating "modified adjusted gross income" (MAGI). See 42 C.F.R. §435.603(d) and (e); see also *BCP Handbook* §2.3 and §16, et. seq. To do so, the agency must count all non-excludable income and apply permissible deductions.

Permissible deductions include pretax withholdings from earned income including but not limited to health insurance premium payments for medical, dental or vision plans, health savings account contributions, and retirement contributions. The agency must also subtract other expenses including but not limited to: student loan interest tax deduction, higher education expenses, self-employment tax deduction, spousal support, penalties for early withdrawal of funds, and IRA contributions. See *BCP Handbook* §16.3, et. seq.

The petitioner does not dispute the fact that he is employed and earning money. His assertion is that the income that he is earning should not be countable income for purposes of FoodShare and BadgerCare Plus. The FoodShare eligibility was addressed in a companion case.

The *BadgerCare Plus Handbook* §16.2 provides a list of income sources that are not counted for purposes of BCP eligibility. It specifically lists live-in care providers under FamilyCare and IRIS.

47. Live-In Care Providers

Certain payments received by live-in care providers who provide care to someone enrolled in an HCBW program are not counted for BadgerCare Plus under MAGI budgeting rules. A live-in care provider lives in the same home as the person for whom they are providing care. **This means the same house, apartment, duplex unit, or other residential unit.** A provider who lives in a separate unit from the person receiving care within a multi-unit building is not a live-in care provider.

Live-in care providers are typically paid as employees, but some may be self-employed. They may be related to or not related to the person receiving care. **In order to not be counted, payments to live-in care providers must meet all of the following criteria:**

- The payments are for HCBW services provided to a member enrolled in one of the following HCBW programs:
- Children's Long-Term Support (CLTS) waiver programs
- Community Integration Program I (CIP 1A and CIP 1B)
- Community Integration Program II (CIP II)
- Community Options Program Waiver (COP-W)
- Family Care
- Family Care Partnership
- **IRIS**
- PACE
- The payments are made to a live-in care provider for services provided to an HCBW member under the member's written HCBW plan of care. Payments made for skilled services that only a nurse or other health professional may perform are not eligible for this exemption.
- **The payments are made to a live-in care provider for services provided while the care provider and the HCBW member are living in the same home.** The live-in care provider may be related to or not be related to the HCBW member.
- The live-in care provider is not providing care to more than 10 people younger than age 19 at the same time or five people aged 19 or older at the same time.

If the payments received by the live-in care provider meet all of these criteria, they are not counted when determining eligibility for BadgerCare Plus. If the payments received by the live-in care provider do not meet all of these criteria, the payments must be treated like other countable earnings or self-employment income. (See [Section 16.4.4.2 Live-In Care Providers](#) for verification of payments to live-in care providers and the Verifying Tax-Exempt Income for Live-in Care Providers Form ([F-02193](#))).

(Emphasis added.) *BCP Handbook* §16.2 (47). If a person is providing care as a live-in caregiver under the FamilyCare or IRIS program, they must submit form F-02193 to the agency for their income not to count for purposes of BCP eligibility. This form is available from the consortium or online here: <https://www.dhs.wisconsin.gov/forms/f02193.pdf>

The petitioner is providing care to a person with disabilities under the IRIS program. He did not state that he is a live-in caregiver. According to the paystubs from September 2023 that were submitted as exhibits by the agency, the petitioner is working approximately 40 hours per week. These paystubs show the address of the man on IRIS for whom he provides care, which is the same address that the petitioner himself uses for mailing purposes with the agency. However, I note that the petitioner reported that he was homeless on his December 16, 2024 application for benefits as well as during his December 27, 2024, FoodShare telephone interview. Therefore, it is my understanding that the petitioner is not a live-in caregiver at this time.

I reviewed the BCP Handbook for other relevant income deductions or exemptions; however, I did not find any other provisions regarding wages earned under IRIS. I do not have the authority to make an exception or render a decision on the basis of fairness. Administrative law judges do not have equitable powers and cannot deviate from the administrative code, policy handbooks, and the statutes. "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978).)

CONCLUSIONS OF LAW

The agency properly included the petitioner's employment income from IRIS for purposes of BadgerCare Plus eligibility.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

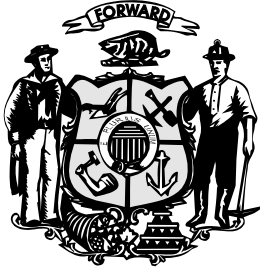
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 14th day of March, 2025

\s _____
Kate J. Schilling
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 14, 2025.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability